

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 -v-

Case No. 16-cr-20654

7 PHILLIP LUCKY MCINTYRE,

8 Defendant.

9 /

10

11 SENTENCING HEARING

12 BEFORE THE HONORABLE MARK A. GOLDSMITH

13 Detroit, Michigan, Monday, September 25th, 2017.

14

15 APPEARANCES:

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WITNESSES:

NONE

NONE

1 Detroit, Michigan.

2 Monday, September 25th, 2017.

3 At or about 11:53 a.m.

4 -- --- --

5 THE CLERK OF THE COURT: Please rise. The United
6 States District Court for the Eastern District of Michigan is
7 now in session, the Honorable Mark Goldsmith presiding. You
8 may be seated.

9 The Court calls case number 16-20654, United States
10 of America versus Phillip McIntyre. Counsel, please place your
11 appearance on the record.

12 MS. SMITH: Good morning, your Honor. Maggie Smith
13 appearing on behalf of the United States.

14 MS. STOUT: Good morning. Kimberly Stout on behalf
15 of Mr. McIntyre who's to my left, your Honor.

16 THE COURT: All right, good morning.

17 MS. STOUT: Good morning. Would you like us at the
18 podium?

19 THE COURT: No, you can stay right there, that's
20 fine. All right, we're here for sentencing. Is everyone ready
21 to proceed?

22 MS. SMITH: Yes, your Honor.

23 MS. STOUT: Yes, your Honor.

24 THE COURT: Have the attorneys reviewed the
25 presentence investigation report?

1 MS. SMITH: I have, your Honor.

2 MS. STOUT: We have, your Honor.

3 THE COURT: All right. Are there any corrections or
4 additions?

5 MS. STOUT: Not --

6 MS. SMITH: Not -- sorry.

7 MS. STOUT: I'm sorry, go ahead.

8 MS. SMITH: Not for the United States.

9 MS. STOUT: No, your Honor. There was a change in
10 the guideline range, picked unfortunately by probation based on
11 prior record which is included in here now so the guideline
12 range is actually 135 to 168, contrary to the Rule 11. So
13 that's very significant, but it's already included, your Honor.
14 Thank you.

15 THE COURT: All right and Ms. Stout, have you gone
16 over the report with your client?

17 MS. STOUT: Yes, I have.

18 THE COURT: All right. The Court adopts the report
19 as its findings in this matter. The defendant is before the
20 Court for sentencing. He pled guilty to count one of the
21 indictment which charged him with sex trafficking of a minor.
22 The guilty plea was accepted. The Court took the Rule 11 Plea
23 Agreement under advisement. Are both sides still urging me to
24 adopt the Rule 11 Plea Agreement?

25 MS. SMITH: Yes, your Honor.

1 MS. STOUT: Yes, your Honor.

2 THE COURT: All right, the Court does adopt it.

3 We'll turn now to computation of the guidelines. The
4 guidelines are advisory and not mandatory, but we do need to
5 calculate them.

6 The Rule 11 Plea Agreement utilized the 2016
7 guidelines manual, sets out a base offense level of 30. Two
8 levels are added because the defendant used a computer to
9 entice, encourage, offer, solicit a person to engage in
10 prohibited sexual conduct with a minor. Two levels are added
11 because the offense includes the commission of a sex act.
12 Three levels are deducted for acceptance of responsibility and
13 his total offense level is therefore 31. Is everybody in
14 agreement with that?

15 MS. SMITH: Yes, your Honor.

16 MS. STOUT: Yes, your Honor.

17 THE COURT: Turning to his criminal history, he has
18 six criminal history points for prior convictions. That places
19 him in category three. Is everyone in agreement with that?

20 MS. SMITH: Yes, your Honor.

21 MS. STOUT: Yes, your Honor.

22 THE COURT: Based on an offense level of 31 and a
23 criminal history category of three, the defendant's guideline
24 imprisonment range is 135 months to 168 months. Is everyone in
25 agreement with that?

1 MS. SMITH: Yes, your Honor.

2 MS. STOUT: Yes, your Honor.

3 THE COURT: Let's turn now to calculation of --
4 pardon me, for consideration of our sentencing options. The
5 statute sets a minimum term of imprisonment of 10 years.
6 There's a maximum term of life. The Rule 11 anticipated a
7 guideline range of 151 to 188. It turns out that that was
8 mistaken. The actual guideline range is 135 to 168.

9 The Rule 11 provided for a sentence that did not
10 exceed the top of the guidelines and that would also be at
11 least the statutory minimum of 120 months. I just want to be
12 clear how the attorneys are viewing this correction now under
13 the Rule 11. Is it agreed that the highest sentence allowed
14 under the Rule 11 is 168?

15 MS. SMITH: Your Honor, technically the Rule 11
16 allows for 151 to 188, but because we made an error in the
17 criminal history, I have agreed not to seek a sentence higher
18 than 168 which are the properly-calculated guidelines.

19 MS. STOUT: Yes, your Honor.

20 THE COURT: What's your view, Ms. Stout?

21 MS. STOUT: That's my understanding with Ms. Smith
22 and I'm seeking a statutory, the statutory sentence, the
23 statutory mandatory minimum of 10 which is allowable in the
24 Rule 11, but also I agree that the top would be 168.

25 THE COURT: Well, Ms. Smith, is it your view that the

1 Rule 11 caps the sentence now at 168?

2 MS. SMITH: I think that I would be willing to say
3 that we can cap it at 168 because of the way in which it was
4 calculated. In some other cases, sometimes there's an error in
5 calculating numbers, but in this case there was an error with
6 the actual criminal history. So in fairness to the defendant,
7 I would be willing to say that we would be bound by a 135 to
8 168 guideline range because the error was a criminal history
9 error.

10 THE COURT: With respect to supervised release, the
11 statute provides for at least five years and up to life. The
12 guidelines are the same. Defendant is not eligible for
13 probation under either the statute or the guidelines.

14 Maximum fine under the statute is 250,000 dollars. A
15 guideline fine range is 30,000 dollars to 300,000 dollars.
16 Restitution is required under Title 18 United States Code,
17 Section 3663(a). Is everyone in agreement with that recitation
18 of our sentencing options?

19 MS. SMITH: Yes, your Honor.

20 MS. STOUT: Yes, your Honor.

21 THE COURT: All right. At this time I'll invite Ms.
22 Stout to make any argument she wishes on behalf of the
23 defendant. Then the defendant can address the Court directly
24 if he wishes to. We'll hear from Ms. Smith for the government.
25 Is there any victim who wishes to make a statement here in open

1 court?

2 MS. SMITH: Your Honor, there is nobody present
3 today. I did forward the letters from the Court and I will use
4 portions of those in my allocution.

5 THE COURT: You forwarded letters from a victim and
6 the victim's mother to the Court?

7 MS. SMITH: Correct.

8 THE COURT: Which I have read. Have you seen those,
9 Ms. Stout?

10 MS. STOUT: I have. Thank you, your Honor.

11 THE COURT: Okay. Go ahead, Ms. Stout.

12 MS. STOUT: Thank you. Your Honor, I filed a
13 sentencing memorandum which I know you received as well as a
14 sealed Exhibit A which I won't be discussing here, but I know
15 you've received it and have certainly reviewed it.

16 THE COURT: I have read both of those.

17 MS. STOUT: Thank you. Your Honor, we, my client and
18 I certainly recognize the seriousness of this offense. There's
19 no question about that. This was a 14-year-old runaway who
20 unfortunately was on the street and according to the sentencing
21 memorandum of the government had begun engaging in commercial
22 sexual activity. She encountered my client and essentially to
23 put it frankly, your Honor, he became her pimp.

24 We recognize that the victim's going -- had ongoing
25 mental issues and will continue now and my client is remorseful

1 for that, for that very fact. I think what he's done here is
2 demonstrated as much as contrition that he can. He's pled
3 guilty. He tried to assist the government. He's clearly
4 someone who is entitled to -- who can be redeemed and should be
5 given some mercy, your Honor, despite the seriousness.

6 He's always admitted and never denied what he was
7 doing for a living which was working with commercial sex with
8 adult women. He recognizes that that's totally the wrong
9 avenue to be in. Sadly, I've gotten calls from a couple of
10 these women that said they would be dead without him. The
11 dynamics are beyond me, but it is probably a result of the life
12 that the girls and my client have grown up with which is
13 unfortunate.

14 There's been a lot of making amends in this which is
15 good. My client's father is here. His sister LaToya is here.
16 His dear friend Danica is here for support, but his childhood
17 basically was on the streets by himself and that's reflected by
18 his criminal history and what went on with him. That's not an
19 excuse, your Honor, and it's not something that my client
20 expects sympathy for. It's an explanation of how maybe these
21 things happened and it snowballs.

22 I think because of all those factors, that 10 years
23 is a very sufficient, significant sentence. 10 years. I
24 remember from old days Judge Cohn would always say five years
25 is a long time and certainly 10 years, a decade of your life if

1 we reflect upon decades of our life which I think we all in
2 this courtroom can now, we change. We grow. We learn. The
3 pain causes that.

4 The median sentence as I pointed out to this Court is
5 120 months for both child porn and sexual abuse cases.
6 Actually the median and I'm saying median sentence for child
7 porn in the national is 100 months. It doesn't specify more
8 exactly what these offenses involved and again, we're not
9 minimizing the offense, but 10 years is a very long time. I'm
10 asking for that sentence, your Honor.

11 Clearly my client has a drug problem, has always had
12 a drug problem. That's usually associated with life on the
13 streets and I'd ask you to recommend the program and I'd ask
14 you to recommend Milan so he will not be too far from the
15 little support that he has and the children that he has and I
16 do believe my client wants to address the Court, too. Thank
17 you, your Honor.

18 THE COURT: All right. Mr. McIntyre?

19 THE DEFENDANT: I just wanted to, I just wanted to
20 apologize to the family of my -- I wanted to apologize to the
21 family for my activities and my ways and my, and my decisions I
22 have made to cause them to be led here in front of you today
23 and I recognize and I understand what I've done was wrong and I
24 take full responsibility for all the decisions I have made and
25 all I can ask today is for you to have leniency and mercy upon

1 my life and give me another chance to be a better person, a
2 better man, to make better decisions for myself, my kids, make
3 better decisions to represent my community in a more positive
4 way and that's pretty much all I could say on my behalf.

5 THE COURT: All right, thank you.

6 MS. STOUT: Thank you, your Honor.

7 THE COURT: All right. Ms. Smith?

8 MS. SMITH: Thank you, your Honor. This case is
9 about this defendant who took a child who was just barely 14
10 years old and if your Honor recalls we had a detention hearing
11 in case down in Judge Friedman's courtroom and you had an
12 opportunity to see this child's face; very clearly, very
13 obviously a child. He took her. He provided her underwear.
14 He took her picture, posed specifically to put her on Back Page
15 and advertise her for commercial sex dates.

16 This isn't a case where we've got a girl who's just
17 on the edge of 18. She had just turned 14 years old and he
18 took her and he trafficked her. This is absolutely a serious
19 offense and if the Court recalls, this defendant also had an
20 opportunity to return her because he ran into her mother in the
21 parking lot of a gas station and her mother said have you seen
22 my child and when faced with that opportunity, he decided to
23 lie and say no.

24 This area as this Court knows has seen an uptick in
25 human trafficking cases and when we look about what the

1 appropriate punishment is, we need to look at not just specific
2 deterrence, but also general deterrence. Lengthy sentences
3 will serve as a deterrent not only to those individuals who,
4 like McIntyre, think that they can make a buck on the backs of
5 small children, but also, too, this would serve a specific
6 deterrence and defense attorney talked about decades and
7 decades is a long time, but if you look at this defendant's
8 criminal history, decades of opportunities is exactly what he
9 has been provided over the years. Probation terms, parole
10 terms, opportunities to better himself and at every chance he
11 rejected them and decided to continue a life of crime. This
12 defendant, as stated in the PSR, acts as if he is above the law
13 and shorter sentences just simply have not worked.

14 In terms of the statistical data on child pornography
15 offenses, I want to be clear that this is not a child
16 pornography offense and so the data of 120 months as being a
17 median is not, it can't be viewed as accurate in terms of sex
18 trafficking of children.

19 I submitted to the Court the impact statements from
20 the victim and her mother in this case and your Honor, they
21 have a right to be heard and when you ask victims of sex
22 trafficking what that's like and where did they go, this is
23 what victim's mother said. Quote, "I am now going through
24 family therapy with my daughter so I can help her get through
25 this and still every day is a battle. I have to sit in her

1 room with her until she falls asleep because she's afraid that
2 he's going to come after her. She wakes up at night screaming
3 because of the nightmares and at times shuts down and won't
4 talk to anyone."

5 And the victim herself said as to the defendant,
6 quote, "You made me think you cared about me and now it's so
7 hard for me to trust people. I'm so afraid of you and my worst
8 fear is that some day I will run into you."

9 Your Honor, these are the voices of the pain. This
10 girl is traumatized forever because when this offense is over,
11 this defendant will go into the Bureau of Prisons and serve his
12 time, but for these victims, the emotional toll is
13 never-ending. I'm asking the Court to fix a sentence that will
14 ensure that this child does not have to worry that he's going
15 to come after her like she so fears. For all of these reasons,
16 I would ask that you impose a sentence somewhere between a 135
17 and 168 months.

18 MS. STOUT: Your Honor, may I have one quick reply?

19 THE COURT: All right, go ahead.

20 MS. STOUT: I had quoted the sexual abuse statistics
21 medium of being 120. I also indicated that child porn was
22 similar, but I specifically said the sexual abuse, whatever
23 that encompasses which I'm assuming it encompasses this sort of
24 crime. Thank you.

25 THE COURT: Well, just to clarify I read in your

1 memorandum as follows; quote, "The instant charge does not have
2 its own category on the table attached, however it could be
3 considered a crime include under either the category of child
4 pornography or the category of sexual abuse. In 2016 the
5 median sentence for both of these categories was 120 months."

6 MS. STOUT: Yes, your Honor.

7 THE COURT: End quote. That, you still stand by that
8 statement.

9 MS. STOUT: I do and I have a chart. I have no idea
10 why I didn't attach it to the sentencing memorandum, just an
11 inadvertent error, but if you'd like to see the table, I did
12 print it from the U.S. Sentencing Commission 2016 data file.

13 THE COURT: Yes. You want to pass that up?

14 MS. STOUT: Thank you.

15 MS. SMITH: I don't have it either.

16 (Pause)

17 THE COURT: Ms. Smith, do you know why human
18 trafficking is not broken out in table seven and is there some
19 other table that might have that information?

20 MS. SMITH: No, I don't know, your Honor. I know
21 that with a mandatory minimal of 120 months in sex trafficking
22 of a minor, it seems like -- I don't know if it goes into the
23 sexual abuse. It certainly wouldn't go in the child
24 pornography category because this is a completely different
25 statute. If it does fit in the sexual abuse, I would say that

1 it probably is encompassing not just that, but also the
2 misdemeanor sexual assault on the airplane cases that are
3 federal crimes as well and so that could explain why there's a
4 median at 120 months coming out of there.

5 MS. STOUT: But on the other hand, I would suggest it
6 talks also about people that take people across borders that
7 are immigrants and horrific -- I mean, there's a real span in
8 this sort of offense, your Honor. We're talking about and
9 again I don't mean to minimize it by though means, but we're
10 talking about one runaway girl that my client made the horrific
11 decision to encounter and abuse, we're not talking about
12 carloads or crossing state lines or so there's a big --

13 THE COURT: Well, do you have any information on
14 those other circumstances you're talking about, many victims or
15 crossing state lines with victims? Do you have any information
16 on median sentences?

17 MS. STOUT: Your Honor, my research, it was limited.
18 It's limited in part because there's not a lot of breakdown. I
19 would certainly, umm, be grateful for an opportunity to do
20 further research and certainly Ms. Smith could, too, on what
21 this looks like in other tables. That's what I came to in my
22 research. Those are usually, umm, the tables that we use with
23 FDO and tables that we're directed to. There's just not a lot
24 of other breakdown unless you get incredibly specific which I'd
25 be more than happy to do.

1 THE COURT: Ms. Smith?

2 MS. SMITH: Well, I don't know that that's
3 necessarily true and I'm not sure she would like the answer she
4 comes up with if she's just looking at sex trafficking.
5 Anecdotally I can say the cases in this building because of 120
6 months mandatory minimum, the average is not 120 months. In
7 fact, last week Judge Friedman just imposed a sentence of over
8 23 years on a sex trafficking case.

9 So my point is only this, your Honor. That data that
10 she's asking you to consider as a starting point is, it has a
11 faulty premise that it's, A, including sex trafficking and B,
12 that the Court ought to consider this entire range of crimes
13 when determining what the appropriate sentence should be. The
14 appropriate analysis as the Court knows is to begin with the
15 proper calculation of the guidelines and then make a
16 determination if this defendant fits within the heartland of
17 those criminals and if so, a guideline sentence is appropriate.
18 If he does not, then there's either a mitigator that brings him
19 down or an aggravator that brings him up. I -- my argument is
20 that that table is an unreliable piece of information because
21 of what it lacks and I don't see that we need to do additional
22 research in order to follow what Congress has asked courts to
23 do when they sentence.

24 MS. STOUT: And I really wouldn't disagree, your
25 Honor, because whoever got 23 months in front of Judge

1 Friedman --

2 MS. SMITH: Years.

3 MS. STOUT: -- I am certain it wasn't one 14-year-old
4 runaway. I am certain the facts are very different and its
5 guidelines were very different. The guidelines here are not
6 that much higher for 120 to 135 being the bottom and
7 considering the history and his life and all of the
8 circumstances, I'm asking for a minor departure your Honor
9 based on the statutory minimum imposed by Congress.

10 I think that this is being blown out of proportion
11 with all due respect to the victim who I'm sure is suffering
12 greatly and will always; that she was removed from her home for
13 unknown reasons, I am sure she's suffering and I don't know the
14 full extent of it and he is wrong and he's said he's wrong and
15 he's apologetic. He's done everything he can to come forward
16 and redeem himself and ask for forgiveness, so we can't compare
17 him with human trafficking which sounds so torture rouse. Umm,
18 he's a pimp. He's a pimp, your Honor. That's what he is.
19 It's old as time. He's a pimp, shame on him and I think 10
20 years would be plenty for him to decide not to pimp anymore.
21 Thank you, your Honor.

22 THE COURT: Well, I'm not clear on what you're
23 arguing. Are you saying sex trafficking offenses don't provide
24 us with any measure of a benchmark because they're so different
25 than the circumstances of this offense? I thought before you

1 were showing me table seven because you thought what courts had
2 done in other sex offenses which don't even involve trafficking
3 necessarily, child pornography and sexual abuse, should provide
4 this Court with some benchmark. Then I heard you say well
5 maybe you could do more research and come up with a more
6 fine-tuned kind of benchmark that targets trafficking
7 specifically. Then I heard you say well, he's just a pimp,
8 it's just one person, it's not really like all the other
9 trafficking cases so you're saying few different things.

10 MS. STOUT: You're right.

11 THE COURT: So tell me, which one do you want me to
12 focus on?

13 MS. STOUT: You're right, your Honor. I felt and I
14 could be wrong that sex abuse seems to cover generally what
15 this was. Now if the Court disagrees or Ms. Smith disagrees,
16 they certainly have a right to. I don't know the specifics, I
17 don't have it so maybe it should just be discounted.

18 This is a mandatory minimum case though set by the
19 Legislature. I think those guidelines are not that far away
20 from the mandatory minimum and that's what I'm asking for so if
21 the Court wishes to discount that because it's not specific
22 enough, I certainly understand. I just thought that that term,
23 sex abuse, seems somewhat fit where we are today. I, I -- I --
24 you know, so that's what my position is, if that's clear.

25 THE COURT: Okay. Anything else, Ms. Smith?

1 MS. SMITH: No, your Honor.

2 THE COURT: All right. The Court must follow the
3 statute enacted by Congress regarding imposition of a sentence.
4 That's Title 18 United States Code, Section 3553. That statute
5 requires a Court to impose a sentence that is sufficient, but
6 not greater than necessary to comply with the purposes that are
7 set out in the statute. Those purposes are for a sentence to
8 reflect the seriousness of the offense, to promote respect for
9 the law, to provide just punishment for the offense, to afford
10 adequate deterrence to criminal conduct, protect the public
11 from further crimes of the defendant and provide the defendant
12 with needed educational, vocational training, medical care or
13 other correctional treatment in the most effective manner.

14 The statute goes on to instruct courts to take into
15 account a number of factors including the nature and
16 circumstances of the offense, the history and characteristics
17 of the defendant, the kinds of sentences available, the
18 sentencing guideline range, pertinent policy statements of the
19 Sentencing Commission, the need to avoid unwarranted sentence
20 disparities among defendants with similar records who have been
21 found guilty of similar conduct and the need to provide
22 restitution to victims of the offense. This Court takes into
23 account all of those factors in fashioning a sentence that it
24 believes is sufficient, but not greater than necessary to
25 accomplish the sentencing goals of the statute.

1 In terms of the seriousness of the offense, it cannot
2 be debated that this is a most serious offense. Sex
3 trafficking of a minor involves the exploitation of a most
4 vulnerable person in a way that can have devastating long-term
5 consequences. It's for that reason that there is a mandatory
6 minimum of 10 years and the possibility of life in prison.

7 The circumstances of this offense are very grave.
8 This victim was a 14-year-old child. She obviously suffered
9 from emotional difficulties and the impact of this crime has
10 affected her in a profound way as reflected in the letter that
11 she wrote to the Court and as reflected in the letter written
12 by her mother. The exploitation that this defendant engaged in
13 will undoubtedly impact this victim for a long time to come,
14 perhaps for the rest of her life. She articulates how
15 difficult it is for her to trust anybody and it's unclear at
16 this point how long that kind of severe consequence will ever
17 be ameliorated, if it ever will be. So the nature of this
18 crime and its particular execution here by this defendant is
19 the most grievous.

20 The Court also has to look at this defendant's
21 personal history and his characteristics. Unfortunately for
22 the defendant, this is not his first contact with the criminal
23 justice system. Putting aside the juvenile adjudications and
24 looking only at his adult criminal convictions, the Court notes
25 that 2005 he was convicted of attempted delivery of controlled

1 substances and in Michigan state court. He was sentenced to
2 prison for that conviction. The sentence was a
3 one-to-five-years sentence. He was also convicted of unarmed
4 robbery, felony firearm, so he comes to this Court not simply
5 as a pimp as defense counsel characterized him, but as someone
6 who has re-offended in serious ways. Drugs, robbery, felony
7 firearm and now sex trafficking of a minor.

8 The Court must look at the total picture and has
9 reviewed the defendant's personal history. He does have family
10 support. He has brought children into the world. He has
11 acquired a G.E.D. He has struggled with drug use according to
12 the presentence investigation report. The TCU drug screen five
13 assessment shows that he has a severe drug or alcohol-related
14 problem. The Court takes all of these factors into account in
15 fashioning a sentence that is sufficient, but not greater than
16 necessary to accomplish the sentencing goals of the statute.
17 In particular, the Court's concerned about protecting the
18 public from further crimes of this defendant, deterring others
19 who would imitate his conduct and vindicate the law that he has
20 violated and ultimately to hand down a sentence that reflects
21 just punishment for this offense.

22 The Court does not believe that a sentence at the
23 statutory minimum or even the bottom of the guidelines would be
24 appropriate in this case. It should be mentioned the Court has
25 reviewed all of the filings that have been made in this case

1 and has taken into account all of the statements made in those
2 filings, both by the government and by defense counsel. The
3 Court has taken into account all of those matters in reaching
4 its conclusion regarding what is an appropriate sentence in
5 this case.

6 The Court does believe that a significant custodial
7 sentence is necessary because of the grievous act of defendant
8 and considering his criminal history as well. Therefore,
9 pursuant to the Sentence Reform Act of 1984 and having
10 considered the sentence guidelines which are advisory and not
11 mandatory and having taken into account all of the factors that
12 are contained in Title 18, United States Code, Section 3553,
13 the Court imposes the following sentence: It commits this
14 defendant to the custody of the United States Bureau of Prisons
15 for a term of 168 months.

16 Upon release from imprisonment, he'll be placed on
17 supervised release for a term of five years. It's further
18 ordered that he pay the mandatory special assessment of 5,100
19 dollars pursuant to the Justice For Victims of Trafficking Act
20 of 2015. Restitution will be determined at a later time, but
21 it is ordered. The Court waives the imposition of a fine, cost
22 of incarceration, cost of supervision due to the defendant's
23 lack of financial resources. Mandatory drug testing is
24 ordered.

25 While on supervision, he'll abide by the standard

1 conditions as adopted by our Court. He shall also comply with
2 the special conditions that are set out in paragraphs 88 and 89
3 of the presentence investigation report. The Court has no
4 objection to the defendant being lodged at Milan and urges that
5 he be placed in a drug rehabilitation program while in prison.

6 The Court also wants to specifically mention that
7 with regard to the argument pertaining to table seven, the
8 Court doesn't believe that that table provides a focused
9 collection of information regarding this defendant's particular
10 crime and therefore the Court does not find any guidance from
11 table seven which defendant made reference to in his sentencing
12 memorandum. Is there any objection to the sentence?

13 MS. SMITH: Not from the United States.

14 MS. STOUT: My client has waived his right to appeal,
15 so and it's within the guidelines so --

16 THE COURT: I'm sorry, you're going to have to speak
17 up.

18 MS. STOUT: The Rule 11 waives his right to appeal
19 within the guidelines your Honor, so I don't believe I have a
20 basis right now for an objection.

21 THE COURT: Mr. McIntyre, I'm going to tell you about
22 your appeal rights. You can appeal your conviction if you
23 believe that your guilty plea was somehow unlawful or
24 involuntary or if is some other fundamental defect in the
25 proceedings not waived by your guilty plea. Under some

1 circumstances, a defendant may also appeal his sentence,
2 however a defendant may waive a right to appeal his conviction
3 and/or sentence and in your plea agreement with the government,
4 you did waive some of your rights in that regard. Such waivers
5 are generally enforceable, but if you believe the waiver itself
6 is not valid, you can present that theory to an appellate
7 court. In any case, if you wish to appeal, you have 14 days to
8 do so. If you cannot afford an attorney, this Court will
9 appoint an attorney to represent you and the clerk of the Court
10 will prepare the necessary notice of appeal on your behalf.

11 I'm going to order that the presentence investigation
12 report be furnished to the United States Bureau of Prisons and
13 to the United States Sentencing Commission. All other copies
14 of the report will remain confidential in accordance with the
15 practice of this Court. Are there any other matters to be
16 taken up?

17 MS. SMITH: Not from the United States.

18 MS. STOUT: No, your Honor. Thank you.

19 THE COURT: All right. Then defendant is remanded.
20 Thank you.

21 MS. SMITH: Thank you.

22 (Sentencing concluded at 12:39 p.m.)

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1 C E R T I F I C A T E

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7 I, David B. Yarbrough, Official Court
8 Reporter, do hereby certify that the foregoing pages
9 comprise a true and accurate transcript of the
10 proceedings taken by me in this matter on Monday,
11 September 25th, 2017.

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16 7/13/2018

/s/ David B. Yarbrough

17 Date

David B. Yarbrough,
(CSR, RPR, FCRR, RMR)
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